

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STATE FARM FIRE & CASUALTY  
COMPANY,

Plaintiff-Appellee,

v

HOLLY MARIE WILLIAMS and JACK  
HANSEN,

Defendants,

and

ESTATE OF LAURA BETH WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED  
June 14, 2005

No. 254536  
Montcalm Circuit Court  
LC No. 02-001347-CK

Before: Hoekstra, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Estate of Laura Beth Williams (“defendant”) appeals as of right from an order granting a declaratory judgment in favor of plaintiff State Farm Fire & Casualty Company (“State Farm”), following a bench trial. Specifically, the order declared that there was no coverage under the personal liability umbrella policy issued to Jack Hansen and Janet Hansen (“Janet”) for any claims made by defendant because of the family member exclusion in the policy. We affirm.

On March 7, 2000, Laura Williams was killed in an accident while riding in a vehicle operated by her sister, Holly Williams. The vehicle was owned by Laura’s and Holly’s then living stepfather Jack Hansen. Initially, the State Farm claims adjuster assigned to the claim believed that the umbrella policy applied to the accident. However, it was later determined that the umbrella policy did not provide additional coverage because of an explicit family exclusion in the policy. Apparently in an effort to collect under the umbrella policy, defendant filed suit against Holly Williams and Jack Hansen on December 10, 2001. State Farm later filed for declaratory judgment arguing that defendant was excluded from recovery under the terms of the Hansens’ umbrella policy, i.e., the family exclusion. Acknowledging that the umbrella policy explicitly excluded liability coverage for defendant’s accident and injuries, defendant argued that State Farm should be estopped from denying coverage. At trial, defendant argued that State Farm had misrepresented to the Hansens the extent of coverage provided under the umbrella

policy and that State Farm had violated MCL 500.2248 by failing to provide the Hansens with a copy of their policy. Contrary to the Hansens' assertion, the trial court found that a copy of the policy had been sent to them and did not estop State Farm from denying coverage.

Defendant first argues that the trial court erred by allowing testimony under MRE 406 regarding State Farm's delivery procedures. This Court reviews a trial court's decision whether to admit evidence for an abuse of discretion. *Waknin v Chamberlain*, 467 Mich 329, 332; 653 NW2d 176 (2002). Evidence of habit or routine practice of an organization is relevant to prove the conduct of the organization on a particular occasion. MRE 406; *Laszko v Cooper Laboratories, Inc.*, 114 Mich App 253, 255; 318 NW2d 639 (1982). Such evidence must establish a set pattern, a routine, or that the conduct has been performed on countless occasions. *Id.* at 256.

Dennis Leach, the Hansens' insurance agent, testified that, at the relevant time, an umbrella policy would have been sent from State Farm's operation center to the agent's office and that the agent would then mail the policy to the insured. Because Leach testified at trial that he had sold less than twelve umbrella policies during his twenty-three years at State Farm and refuted earlier testimony that there was no procedure for delivering umbrella policies, defendant argues that these infrequent acts and Leach's inconsistent testimony are not enough to establish a routine practice. However, we believe that defendant is artificially distinguishing between umbrella policies and the overall routine of State Farm with regard to mailing copies of policies. The trial court was reasonably satisfied that Leach's inconsistencies were explained by the differences in both time and policies. Witness credibility issues are a question for the court in a bench trial because it is the trier of fact, and this Court defers to the lower court with regard to credibility given its opportunity to personally view and hear witnesses who appear before it. *In re Clark Estate*, 237 Mich App 387, 395-396; 603 NW2d 290 (1999). Therefore, we are satisfied that the trial court did not abuse its discretion in admitting routine practice evidence of State Farm and its agents.

In a related argument, defendant contends that the trial court erred in concluding that the Hansens had received a copy of their policy. In accordance with this contention, defendant argues that State Farm violated MCL 500.2248, which requires an insurer to deliver a copy of the policy before issuing insurance. We hold that the trial court's factual finding was not clearly erroneous. Janet testified that approximately two weeks from the date of purchase, she had not yet received a copy of the policy. However, after contacting State Farm to obtain a copy, she received a declarations page regarding her umbrella policy, but not the actual policy. The trial court determined that the Hansens had received a copy of their policy based on Janet's testimony<sup>1</sup> along with evidence showing State Farm's routine for mailing policies. Clearly, the trial court weighed the testimony while considering the credibility of the witnesses and eventually came to a reasoned factual conclusion. In this regard, there is a common-law presumption that letters have been received after being placed in the mail in the due course of

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<sup>1</sup> The trial court reasoned that, because Janet was "a person of great detail," she would have made a follow-up phone call to State Farm to obtain the policy if it had not been sent after her first request.

business. *Good v Detroit Auto Inter-Ins Exchange*, 67 Mich App 270, 274; 241 NW2d 71 (1976). For the above reasons, the trial court's findings of fact were not clearly erroneous.

Defendant next argues that the trial court incorrectly applied the analysis set forth in *Harts v Farmers Ins Exchange*, 461 Mich 1; 597 NW2d 47 (1999), to this case. Specifically, defendant contends that State Farm had a duty under *Harts* to inform the Hansens of the family exclusion to the umbrella policy because State Farm had represented to the Hansens that the umbrella policy was coextensive with the automobile and homeowner's policies. This Court reviews a trial court's conclusions of law de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

We conclude that defendant's reliance on *Harts* is misplaced. In that case, the plaintiffs filed a *negligence* cause of action against their insurance company. *Id.* at 3. In considering the elements of negligence, the Court in *Harts* held that while generally there is no duty for an insurance agent to advise an insured as to their coverage, a duty can arise, for instance, when "the agent misrepresents the nature or extent of the coverage offered or provided." *Id.* at 9-10. Here, defendant incorrectly asserts that the trial court found that State Farm misrepresented the extent of its coverage. To be precise, the trial court characterized the statements made by State Farm's agent regarding the extent of coverage as being "wrong," but never expressly made a finding of fact that the statement was a misrepresentation. But, more importantly, defendant did not assert at trial that State Farm was negligent in issuing the policy to the Hansens. Regardless of defendant's mischaracterization, any reliance on *Harts* by the trial court would have been irrelevant because that case analyzed a negligence claim.

Finally, defendant argues that the trial court erred by not estopping State Farm from denying liability coverage to defendant under the umbrella policy. This Court reviews equitable actions de novo and reviews a trial court's findings of fact supporting the decision for clear error. *Webb v Smith*, 224 Mich App 203, 210; 568 NW2d 378 (1997). Equitable estoppel, while not an independent cause of action, may be used to preclude an opposing party from asserting or denying the existence of a particular fact. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). Equitable estoppel may arise when "(1) a party, by representation, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts." *Id.* at 141. Generally, estoppel will not be applied to broaden the coverage of a policy to protect the insured against risks that were either not included in the policy or were expressly excluded from the policy. *Kirschner v Process Design Associates, Inc*, 459 Mich 587, 593-594; 592 NW2d 707 (1999). However, estoppel has been previously applied to expand covered risks when an insurance company misrepresented the terms of the policy to the insured where the inequity suffered by the insured outweighed the inequity to the insurer from expanding coverage. *Id.* at 594-595.

In this case, the trial court characterized the statement made to the Hansens at the time the policy was purchased as "wrong", but did not specifically make a factual finding regarding the nature of the statement. But regardless of the characterization of the representations made to the Hansens, we believe that the Hansens were not justified in relying on such assertions for the following reasons. First, within a reasonable time after issuance of an insurance policy, an insured is obligated to read it and to raise questions concerning the coverage. *Parmet Homes*,

*Inc v Republic Ins Co*, 111 Mich App 140, 145; 314 NW2d 453 (1981). While Janet contended at trial that she never received a copy of her policy, the trial court found, to the contrary, that she did. Second, there was no testimony that whether the coverage extended to the Hansen's family was material in their decision to purchase the policy. Acknowledging that the death of a family member is a tragic event, we nevertheless believe that the equities balance in favor of the insurer even if there was a misstatement by the insurer when the insured fails to comply with their obligation to read their insurance policy and raise any questions he or she may have regarding its coverage. See *Parment Homes* at 145. Here, the Hansens purchased their umbrella policy on September 27, 1996, and the car accident did not occur until March 7, 2000. If the Hansens were indeed concerned about the extent of their coverage, they should not have waited until after the accident, which was approximately three and a half years from the date the policy was purchased, to review it.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly